

**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY**

WRIT PETITION No. 16432 of 2006

Between:

Chava Ajay Kumar and others

...Petitioners

AND

The State Election Commission,
Hyderabad and others

...Respondents

Counsel for the petitioners: Sri G.Vidyasagar

Dated: 8-9-2006

ORDER:

Per G.S.Singhvi, CJ

In this petition, the petitioners have prayed for issue of a direction to the respondents to delete the names of the voters enumerated against D.No.5-7-200 from the electoral rolls of Ward No.22 of Khammam Municipality (Khammam General Assembly Constituency No.280). They further prayed for issue of a direction to the respondents to rectify the discrepancy in the electoral roll.

In the affidavit filed by him, petitioner No.1 – Chava Ajay Kumar has averred that he had contested election held in September 2005 from Ward No.22 of Khammam Municipality. He has further averred that few days before notification of municipal election, as many as 600 voters were enumerated under D.No.

5-7-2000 and, despite objections, the concerned authorities did not take action for carrying out necessary corrections. Still further, he has averred that representation made by the Communist Party of India (Marxist), Khammam Town Committee, Khammam was forwarded by the State Election Commission to District Collector and District Election Authority, Khammam with a direction to make enquiry into the matter, but the latter has not taken remedial measures. In paragraphs 5 and 6, the petitioner has detailed the irregularities in the preparation of the electoral roll and then averred that this has been deliberately done with a view to help the candidate who won the election held in September 2005.

Sri C. Chandrasekhar Reddy, Revenue Divisional Officer, Khammam has filed counter-affidavit on behalf respondent No.2. He has averred that while forwarding a copy of representation made by Sri P. Eshwar Reddy, CPI (Marxist), Khammam, the State Election

Commission had asked him to enquire into the matter and take necessary action as per the Andhra Pradesh Municipalities Act, 1965 and rules framed thereunder. He has further averred that Election Commission of India had announced summary Revision of Electoral Rolls, 2004 with qualifying date as 1-1-2004. During the period of summary revision from

17-11-2003 to 8-11-2003, the students, professors and other staff of Mahatma Medical College filed claims in Form-6 for inclusion of their names in the electoral roll of Polling Station No.81 against H.No.5-7-200. Their claims were rejected by Electoral Registration Officer, Khammam. However, the appeal filed by them was allowed by the competent authority vide order dated 17-2-2004 and, in compliance of that order, the names of the students etc. were included in the electoral rolls of Polling Station No.81 of 280 Khammam Assembly Constituency. According to Sri Chandra-sekhar Reddy, electoral rolls for municipal election was prepared and notified on the basis of Assembly electoral rolls. According to him, the petitioners did not file any objection in Form No.27 against the inclusion of names in the electoral roll and, therefore, all the persons whose names figured in the electoral roll of Ward No.22 were allowed to cast vote. In paragraphs 6, 9, 10, 11, 12 and 13 of his affidavit, Sri Chandrasekhar Reddy has made the following averments:

“6. It is submitted that the Election Commission of India has announced the summary revision of electoral rolls 2004 with qualifying date as on 1-1-2004. During the period of summary revision from 17-11-2003 to 8-12-2003, the students of Mamata Medical College, professors and other staff working in the said College have filed claims in Form 6 for inclusion of their names in the voters list of polling station No.81 against H.No.5-7-200 of Khammam Municipality within 280 Khammam Assembly Constituency as they are living in the said house. After due enquiry, the claims were rejected by the AERO Khammam on the ground that all the individuals shown as their residential address as 5-7-200 of Mamata Medical College, Khammam and that the claims filed by them are in incomplete shape and not

furnished the required information as per the Rules informed under R.P.Act, 1950. Therefore, the claims were recommended for rejection. Accordingly, the ERO, Khammam has rejected the claims. Aggrieved by this, the claim petitioners preferred appeals before this respondent and after hearing the matter, the appeals were allowed and ordered for inclusion of their names in Polling Station No.81 against the H.No.5-7-2000 of Khammam Municipality vide proceedings No.C7/163/2004 dt.17-2-2004. Pursuant to these orders, the authorities included the names in the voters list of Polling Station No.81 of Khammam within 280 Khammam Assembly Constituency.

9. It is further submitted that the 1st respondent has issued notification vide Ref.No.1189/SEC/F2/2005-8, dt.27-3-2006 authorising respondent No.3 for preparation and publication of electoral roll of Ward No.22 of Khammam Municipality duly adopting the assembly electoral rolls concerned published with reference to 1-1-2006 as qualifying date. Pursuant to these orders, respondent No.3 has issued notice of publication of Electoral Roll on 10-4-2006 in Form-I for Ward No.22 inviting any person who wishes to lodge any claim for including his/her name in the roll or any objection to the inclusion of a name or any objection to the particulars in entry in the said roll, shall first get such claim or objection settled with reference to the corresponding entry in the Electoral Roll of the Assembly Constituencies by lodging suitable claim or objection under the provisions of RP Act, 1950 and the Registration of Electors Rules, 1960 made thereunder, before the ERO of the concerned Assembly Constituency. But no objection petitions in Form No.27 were received by the ERO Khammam as on today.

10. It is humbly submitted that the main contention of the petitioners are that H.No.5-7-200 is a non-residential house and in the said premises a General Hospital by name Mamata General Hospital is situated. The said hospital belongs to Mamatha Educational Society. One of the brothers of the President of Mamatha Educational Society has contested the elections for Ward No.22 in the elections held in September, 2005 wherein he got elected by a difference of margin of 800 and above votes. The petitioners alleged that respondent No.3 issued a certificate vide Lr.No.A2/1552/2006, dt.3-8-2006 stating that the house number is assessed for non-residential purpose. Further, the petitioners averred that under A.P.

Municipality and Nagarapanchayats (Registration of Electors) Rules, 1994 for the purpose of preparing electoral rolls, the Registration Officer is required to send Form No.5 to the occupants of dwelling houses. It is submitted that the A.P. Municipality and Nagarapanchayats (Registration of Electors) Rules, 1994 were amended vide G.O.Ms.No.516, Municipal Administration and Urban Development (Elec.I) MA 15th October 2001 and new rules viz., the Andhra Pradesh Municipalities and Nagar Panchayats (Preparation and Publication of Electoral Rolls) Rules, 2001 came into force. Therefore, the contention of the petitioners to send Form No.5 to the occupants of dwelling house is denied.

11. It is submitted that under para 5.1 of Hand Book for Electoral Registration Officers it was stated that on the other hand even persons living in sheds and persons living on pavements without any roof are eligible for enrolment provided they are ordinarily resident in the sheds or on pavements in a particular areas, do not change place of residence and are otherwise identifiable. It is further submitted that where an eligible student lives in a hostel or mess or lodge more or less continuously, going back to his normal home or place of residence only for short periods, it can be held that he is ordinarily resident in the place where the hostel or mess or lodge is situated. Therefore, the contention of the petitioner that H.No.5-7-200 is non-residential and no voter can be enumerated in the said door number is denied.

12. It is further submitted that the petition submitted by P. Eswara Reddy, Secretary, CPI (M), Khammam and Sri Viswanadham and 13 others residents of Chervu Bazar and also the representation of MLA, Khammam has been sent to the Revenue Divisional Officer, Khammam for enquiry and to take necessary action. In turn, the Revenue Divisional Officer, Khammam has directed the AERO Khammam through Ref.No.DT/1/600/06 dated 22-4-2006 to cause detailed enquiry into the representation and take necessary action and report compliance. As the AERO Khammam has sought instructions on the matter, he was issued directions by the Revenue Divisional Officer, Khammam vide his ref. DT/1/600/06, dt.1-8-2006 to personally enquire into the genuineness of the voters enrolled against the Door No.5-7-200 and then issue notices for deletion of entries on the ground that the person concerned has

ceased to be ordinarily resident or that he is otherwise not entitled to be registered in the electoral roll and submit deletion proposals, if any, duly following the prescribed procedure. It is further submitted that the entire revenue machinery is fully engaged in Elections to the Member, MPTC and ZPTC, Ward and Gram Panchayat Elections for the last three months, the enquiry into the representation is getting delayed. However, this respondent is taking steps for early completion of the enquiry into the representation through the AERO/ERO for deletion of the voters enumerated against D.No.5-7-200 if any found ineligible in accordance with the guidelines issued by the ECI by following due procedure.

13. I respectfully submit that originally D.No.5-7-200 is allotted to Mamatha General Hospital. Subsequently thereto, the Khammam Municipality issued revised Door Numbers to different departments. The particulars of Door Numbers for various departments is given below:

KHAMMAM MUNICIPALITY
MAMATHA EDUCATIONAL SOCIETY ASSESSMENT
NUMBERS

1.	Mamatha General Hospital	5-7-200
2.	Mamatha Educational Society	5-7-200/A
3.	Mamatha Educational Society, Hostel & Office	5-7-200/B
4.	Mamatha Educational Society, Mamatha Dental College	5-7-200/1
5.	Mamatha Educational Society, Mamatha Staff Quarters	5-7-200/3
6.	Mamatha Educational Society, Mamatha Staff Quarters	5-7-200/4
7.	Mamatha Educational Society, Mamatha Staff Quarters	5-7-200/5
8.	Mamatha Educational Society, Mamatha Dental College	5-7-200/6
9.	Mamatha Educational Society, Mamatha Dental College	5-7-200/7
10.	Mamatha Educational Society, Mamatha Boys Hostel	5-7-200/8
11.	Mamatha Educational Society, Mamatha College	5-7-200/9

As seen from the above particulars, the faculty and non-faculty employees who are working in the said Medical College and also the number of students who are residing in the hostels

are staying in their residential quarters and hostels. As per the R.P. Act, 1950 and the rules made under registration of Electoral Rules, if a person is residing in a particular place for more than six months, he should be treated as ordinarily resident of that place. Hence, the names included against the Door No. are legally valid and justified.”

We have heard Sri G.Vidyasagar, learned counsel for the petitioners and perused the record. In our opinion, it is not necessary to decide the issue raised in writ petition by recording a detailed order because we are convinced that the writ petition is liable to be dismissed as not maintainable in view of the bar contained in Article 243-ZG and also because none of the persons whose names are sought to be deleted from the electoral rolls has been impleaded as parties.

In Writ Petition No.14068 of 2006 – **Eppala China Venkateswarlu and others v. The Secretary to Government, Social Welfare (F) Department, Government of Andhra Pradesh, Hyderabad and others**, this Court considered the ambit and scope of Article 243-O, which is para materia to Article 243-ZG, and held that the bar contained therein to the maintainability of writ petition filed for challenging the election to the Gram Panchayat is absolute. The High Court’s power of judicial review enshrined in Article 226 of the Constitution of India is not abrogated by the bar contained in Article 243-O. It is merely postponed till the adjudication of dispute by a competent forum constituted under the law enacted by the competent Legislature. The propositions laid down in the order dated 3-8-2006 passed in Writ Petition No.14068 of 2006 read as under:

- 1) The word “election” appearing in Article 243-O and the provisions contained in the 1994 Act and the rules framed thereunder bears larger connotation. It embraces and includes all steps commencing from the date of notification by the competent authority, whereby the electorates are called upon to elect Sarpanchas and Ward Members and ending with declaration of result.

Reservation of offices of Sarpanch and Wards in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women, preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny of nomination papers and withdrawal thereof, publication of the list of eligible candidates, allotment of symbols, appointment of election agents, the conduct of poll, counting of votes, declaration of results and all other ancillary steps taken for the purpose of holding elections fall within the ambit of the term “election”. {**N.P. Ponnuswami v. Returning Officer, Namakkal Constituency** {AIR 1952 SC 64}, **Mohinder Singh Gill v. Chief Election Commissioner** {AIR 1978 SC 851}, **Election Commission of India v. Shivaji** {AIR 1988 SC 61} and **Election Commission of India v. Ashok Kumar** {(2000) 8 SCC 216}.

- 2) i) The bar contained in Article 243-O, which begins with non-obstante clause, debars all Courts from entertaining any challenge to law relating to delimitation of constituencies or allotment of seat made or purporting to be made under Article 243-K or election to the Panchayats. This bar also operates against the High Court’s power of judicial review under Article 226. (**N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Durga Shankar Mehta v. Raghuraj Singh, Election Commission of India v. Shivaji and Election Commission of India v. Ashok Kumar** (supra))
- ii) The proposition contained in clause (i) above is subject to the condition that challenge to the delimitation may be entertained in exceptional cases where no objections were invited and no hearing was given provided that such challenge is made before issue of notification for holding election. {**State of U.P. v. Pradhan Sangh Kshetra Samiti** {1995 Supp.(2) SCC 305}}
- iii) The bar contained in Article 243-O (b) operates only till the adjudication of election dispute by an adjudicatory forum created by or under any law made by the Legislature of the State. An order made by an adjudicatory forum constituted under the law made by the State Legislature can be called in question by filing a petition under Article 226 of the Constitution.

- 3) The bar contained in Article 243-O operates at all stages of the election i.e. notification issued by the State Election Commission calling upon the electorate to elect Sarpanches and Ward Members; reservation of offices of Sarpanches in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women; preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny and withdrawal thereof; allotment of symbols; appointment of election agents; counting of votes and declaration of result.
- 4) The bar contained in Article 243-O (b) does not operate qua challenge to the constitutionality of a statutory provision relating to elections, though, even in such a case, the High Court will be extremely loath to pass an interlocutory order which has the effect of stalling or jeopardizing the process of election or which may result in the constitutional hiatus on account of indirect violation of Article 243-K (3) read with Article 243-K (1).
- 5) The observations made in **Harnek Singh v. Charanjit Singh {(2005) 8 SCC 383}** have to be read in the light of the law laid down by the Constitution Benches in **N.P. Ponnuswami v. Returning Officer, Namakkal Constituency** (supra), **Durga Shankar Mehta v. Raghuraj Singh {AIR 1954 SC 520}**, **Mohinder Singh Gill v. Chief Election Commissioner** (supra) and by three Judges Bench in **Election Commission of India v. Ashok Kumar** (supra).
- 6) The High Court may entertain petition under Article 226 of the Constitution if the prayer contained in such petition does not have the effect of interpreting or delaying the process of election { **Election Commission of India v. Ashok Kumar** (supra)}.

By applying the ratio of the law laid down in the aforementioned case, we hold that the writ petition is not maintainable.

There is another reason for our disinclination to entertain the petitioners' prayer. For the reason best known to them, the petitioners have not impleaded those persons as party respondents whose names are sought to be deleted from the electoral rolls. In our considered

view, without issuing notice and giving them opportunity of hearing, the court cannot ordain the official respondents to delete the names of unknown persons from the electoral rolls.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No.20501 of 2006 filed by the petitioners for interim relief is also dismissed.

G.S.SINGHVI, CJ

8th September, 2006

G.V.SEETHAPATHY, J

GRR